United Nations CCPR/C/113/D/2054/2011

International Covenant on Civil and Political Rights

Distr.: General
7 May 2015

Original: English

Human Rights Committee

Communication No. 2054/2011

Views adopted by the Committee at its 113th session (16 March–2 April 2015)

Submitted by:	Mamatkarim Ernazarov (represented by counsel, Saidkamal Akhmedov)
Alleged victim:	The author's brother Rakhmonberdi Ernazarov
State party:	Kyrgyzstan
Date of communication:	11 March 2011 (initial submission)
Document references:	Special Rapporteur's rule 92 and rule 97 decision, transmitted to the State party on 26 April 2011 (not issued in a document form)
Date of adoption of Views:	25 March 2015
Subject matter:	Death of the author's brother while in custody of the police
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Life; effective remedy; torture; prompt and impartial investigation
Articles of the Covenant:	Articles 6 (1) and 7 alone and in conjunction with article 2 (3)
Articles of the Optional Protocol:	Article 5 (2 (b))

GE.15-09068 (E)
1509068

Please recycle

Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (113th session)

concerning

Communication No. 2054/2011*

Submitted by:	Mamatkarim Ernazarov (represented by counsel, Saidkamal Akhmedov)
Alleged victim:	Rakhmonberdi Ernazarov (the author's brother, deceased)
State party:	Kyrgyzstan
Date of communication:	11 March 2011 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 March 2015,

Having concluded its consideration of communication No. 2054/2011, submitted to the Human Rights Committee by Mamatkarim Ernazarov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The author of the communication is Mamatkarim Ernazarov, a national of Kyrgyzstan, born on 2 July 1967. The communication is presented on behalf of the author's brother, Rakhmonberdi Ernazarov (deceased). The author claims that his brother's rights under articles 6 (1) and 7, read alone and in conjunction with article 2 (3) of the Covenant, were violated.[1] The author is represented by counsel.

The facts as presented by the author

2.1 The author's brother was arrested on 4 November 2005, as a result of a complaint that he had committed forced sodomy against the father of his former girlfriend. He was

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

[1] The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995.

detained in the Osh City police station. At the time of his detention, the author's brother was in sound physical and mental health. On 7 November 2005, the author's brother was formally charged with violating article 130 of the Criminal Code of Kyrgyzstan, which prohibits forced sodomy. On the same day, the local prosecutor ordered that the author's brother be transferred to a pretrial detention centre operated by the Ministry of Justice. Despite the prosecutor's transfer order, and for reasons that were not investigated or explained by the authorities, the author's brother continued to be held at the police station for a further 13 days.

2.2 On 20 November 2005, shortly after 6:30 a.m., the author's brother was found unconscious and bleeding profusely from numerous cuts in his detention cell, which was a holding cell, measuring 3 metres by 3 metres, that he shared with six other men. He had cuts on his throat, the inner side of his left wrist and the inner side of his left ankle and abrasions on his left forearm, the inner side of his right ankle and his abdomen, and several of his teeth were missing. After being found by the guards, the author's brother was taken by ambulance to the Osh central hospital, where he died shortly after his arrival. An autopsy was conducted the same day. In the portion of the autopsy report entitled "circumstances of the case", it was stated that the "prisoner Rakhmonberdi Ernazarov, 1961, cut his throat for the purpose of committing suicide".

2.3 The author maintains that throughout the course of his confinement his brother had been subjected to psychological and physical abuse by other men in his cell because of the allegations against him. The authorities were aware of the abuse and also of the risk it posed to his life, but did nothing to prevent, halt or punish it. He was particularly vulnerable because he was charged with a sexual offence against another man. A guard at the police station where he was held told the family lawyer that the author's brother had been subjected to constant insults, that he had been forced to eat and sleep near the toilet, that his dish and spoon had been damaged by his cellmates to make it difficult for him to eat and that he had been forced to inflict injuries upon himself with metal cutlery.

2.4 Throughout his detention, the author's brother could not be visited by his family and saw his lawyer only on one occasion. The author and his sisters made repeated attempts to visit him. The police station did not have facilities where visits by relatives could take place. The family was told that they were not permitted to communicate with him and that they could not send him any mail or give him any food. On one occasion when his sisters attempted to visit him they were told by the investigating officer in charge of his case that he was "better off dead".

2.5 On 21 November 2005, an investigator from the Ministry of Internal Affairs ordered an investigation into the death of Mr. Ernazarov, which was to be led by a prosecutor from the Osh Prosecutor's Office. On or around the same date, the Department of Internal Security of the Ministry of Internal Affairs ordered an internal investigation of Mr. Ernazarov's death in custody. The author maintains that both investigations were perfunctory and that both concluded that his brother had committed suicide. The police failed to seize important evidence, question key witnesses, undertake a proper autopsy and investigate why a vulnerable prisoner had been detained in such a way. While the investigations concluded that the author's brother had cut his own throat, no cutting instrument was ever recovered from the cell. In an independent evaluation of the autopsy report of the author's brother, Physicians for Human Rights indicated that it would be impossible to conclude from the autopsy report that Mr. Ernazarov's death was a suicide, and that several injuries detailed in the report were very unusual for a suicide and could indicate that the author's brother had been trying to defend himself. The report did not provide any timing for the non-lethal injuries and contained contradictory descriptions of the lethal wounds on the throat.

2.6 The author also submits that an alleged suicide note, written on a cigarette pack, was recovered from the detention cell of his brother.[2] However, no writing implements were recovered from the cell. The investigation ordered a forensic assessment of the handwriting, in which the note was compared with writing samples provided by the police, and which concluded that the note had been written by Mr. Ernazarov. However, family members familiar with the handwriting of the victim maintain that it was not written by him.

2.7 The author submits that all available domestic remedies have been exhausted. Between 29 November 2005 and 2 June 2006, the family lodged seven requests with the Public Prosecutor and two complaints with the Ministry of Internal Affairs relating to the investigation into the death of the author's brother. The family requested information concerning the investigation, identified facts and circumstances that required further investigation and evidence that needed to be gathered, and protested against their exclusion from the investigation.

2.8 Between 16 August 2006 and 10 February 2007, the family filed four applications before the Osh City Court and two appeals to the Regional Court, challenging, without success, the failure to investigate. On an unspecified date, the family filed a complaint before the Supreme Court. The Supreme Court returned the case to the City Court for decision. On 13 March 2008, the City Court again refused to consider the substance of the claim.

The complaint

3.1 The author alleges that his brother's right under article 6 (1) was violated because the State party failed in its positive obligation to protect the right to life of a vulnerable prisoner. The author refers to the Committee's jurisprudence defining the right to life as the "supreme right",[3] which cannot be understood in a restrictive manner, and the protection of which "requires that States should adopt positive measures".[4] The author stresses that the positive obligation to protect life applies in particular to detainees,[5] who are particularly vulnerable,[6] and that the State party has a special responsibility to take adequate measures to protect them.[7] Where a State fails to take adequate measures to protect prisoners, it may be responsible for a violation of article 6 (1) of the Covenant.[8] The author refers to the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which state that "prisoners suspected or convicted of sexual offences are at a particularly high risk of being assaulted by other prisoners",[9] and that responsibility to protect requires that the States take positive measures to protect prisoners from that risk. The author also refers to the Committee's holding in one case that "whether [the individual] committed suicide, was driven to suicide or was killed by others while in

[2] The note, written in Uzbek, allegedly stated: "My killers are [the father of Mr. Ernazarov's former girlfriend] and [his former girlfriend]. They passed the shaving razor to me. Nobody is to be blamed. Nobody should suffer because of me. This was not done on a court's verdict. There is a higher court in Rome. I want my conscience cleaned. Good bye, Rakhmon."

[3] See general comment No. 14 (1984) on the right to life, para. 1.

[4] General comment No. 5 (1994), para. 5.

[5] The author refers to communication No. 763/1997, *Lantsova* v. *Russian Federation*, Views adopted on 26 March 2002, para. 9.2.

[6] See general comment No. 21 (1992) on the humane treatment of persons deprived of their liberty, para. 3.

[7] The author refers to communications No. 84/1981, *Dermit Barbato* v. *Uruguay*, Views adopted on 21 October 1982, para. 9.2 and No. 30/1978, *Bleier* v. *Uruguay*, Views adopted on 29 March 1982, paras. 11.2 and 13.3.

[8] The author refers to *Dermit Barbato* v. *Uruguay*, para. 9.2.

[9] CPT Standards, p. 23.

custody, the inescapable conclusion is that in all the circumstances, the [State party's] authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant".[10] He further refers to reports indicating that in Kyrgyzstan prisoners charged with certain sexual offences or who are perceived to be homosexual are subjected to persecution and physical violence.[11] The author maintains that because his brother was a prisoner charged with a sexual offence, the State party knew that he was at risk and that he was being abused and should not have placed him in a cell with six other men and kept him there in violation of an order of the prosecutor.

3.2 According to the author, as the State party's authorities have failed to provide, through an independent investigation, a plausible explanation for the death in custody of the author's brother, there is a presumption that he was killed arbitrarily,[12] which can be rebutted only through a thorough, prompt and impartial investigation. The author refers to the Committee's jurisprudence, in which the Committee has held that in cases of death in custody the burden of proof cannot rest alone with the author of a communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information.[13] He maintains that a thorough, prompt and impartial investigation did not take place, that the authorities failed to explain the numerous traces of abuse on his brother's body, that they failed to explain why he was not transferred from police custody, that they failed to locate and investigate the weapon used to kill his brother, that the autopsy report was inadequate and that an inadequate evaluation of the alleged suicide note was made. He further notes that his brother was a physically and mentally strong person who had not suffered from any psychiatric disorder, and that the only information indicating that he had contemplated suicide came from his cellmates, who were suspected of killing him.

3.3 The author submits that his brother was subjected to physical and psychological abuse while in the custody of the Kyrgyz authorities, with the knowledge and complicity of its officials. He maintains that the above amounted to torture, in violation of article 7 of the Covenant.

3.4 The author also submits that the State party failed to conduct a prompt, impartial, thorough and effective investigation, in violation of its obligations under articles 6 (1) and 7 of the Covenant, read in conjunction with article 2 (3). The author maintains that the investigation was not impartial because both the internal investigation and the bulk of the criminal investigation were conducted by the Ministry of Internal Affairs, which is the institution that was holding his brother in custody when he was tortured and killed with the knowledge and acquiescence of police officers, who were part of that same institution.[14]

[10] *Dermit Barbato* v. *Uruguay*, para. 9.2.

[11] The author refers to the International Crisis Group report "Kyrgyzstan's prison system nightmare", Asia Report No. 118 (16 August 2006), available from www.crisisgroup.org/en/regions/asia/central-asia/kyrgyzstan/, and to the report of the non-governmental organization Oasis, "Report of the monitoring of human rights in the penitentiary facilities of the Chuy Region of the Kyrgyz Republic: respect of the right for protection from discrimination of sexual minorities and stigmatized groups among prisoners" (Bishkek, 2004), copy provided by the author.

[12] The author refers to communication No. 1225/2003, *Eshonov* v. *Uzbekistan*, Views adopted on 22 July 2010, para. 9.2.

[13] The author refers to *Bleier* v. *Uruguay*, para. 13.3, and communication No. 458/1991, *Mukong* v. *Cameroon*, Views adopted on 21 July 1994, para. 9.2.

[14] The author refers to the Committee's general comment No. 31, para. 15; the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the European Court of Human Rights, *Bati and Others* v. *Turkey*, Applications Nos. 33097/96 and 57834/00, judgement of 3 June 2004, para. 135.

The fact that the criminal investigation was overseen by a prosecutor was not sufficient to guarantee its independence, because the prosecutor relied on the evidence gathered by the police. The author refers to the findings of the Special Rapporteur on the independence of judges and lawyers, who reported after his visit to Kyrgyzstan that "prosecutors often appear unwilling to initiate criminal prosecutions in this regard, and the Special Rapporteur was not able to obtain information on any criminal prosecutions that have been brought for torture or ill-treatment" (see E/CN.4/2006/52/Add.3, para. 29). The author points out that, as a result of the inadequate investigation, no one has been held criminally responsible for the torture and death of his brother. The internal investigation led only to mild disciplinary sanctions against police officers: one oral warning, one order to strengthen control over staff and a sanction for unsatisfactory organization of work; the latter was not imposed because the police officer was already under a strict warning for an earlier offence. The author maintains that the investigation was not impartial, because it never considered any possible cause of death other than suicide. The author also maintains that the investigation was not efficient because it excluded the family of the victim: they were not informed of its progress, their requests that the torture be investigated were ignored, they were denied the right to question the forensic medical experts or to have an independent expert present, and no final report of the investigation was published or made available to the family.

3.5 The author lastly submits that the State party failed to provide access to effective remedies, including compensation and adequate reparation, in further violation of articles 6 (1) and 7, read alone and in conjunction with article 2 (3) of the Covenant. The author submits that the domestic law prevents the family from submitting a civil claim for compensation for the death of the author's brother, since it requires a criminal conviction to have been issued against an agent of the State.[15] Even if a claim for negligence might have been possible in the light of the disciplinary penalties imposed as a result of the internal police investigation, such a claim would have been inadequate to compensate the victim's family for his abuse and death. In practice, even that inadequate avenue was precluded, because the authorities refused to provide the family with an official copy of the results of the investigation.

State party's observations on admissibility and merits

4.1 On 13 July and 16 November 2011 and on 14 March 2012, the State party submitted that a criminal investigation for forced sodomy had been initiated against Rakhmonberdi Ernazarov on 4 November 2005, based on a complaint filed by the father of his former girlfriend; he was arrested that same day. On 7 November 2005, he was charged under article 130 (2) of the Criminal Code. On 20 November 2005, at around 6:30 a.m., the author's brother was delivered to the Osh hospital with injuries and he died shortly thereafter. On 21 November 2005, an investigator opened a criminal investigation under article 104 (4) of the Criminal Code (deliberate infliction of heavy bodily injuries, resulting in death). On 24 November 2005, the investigation was discontinued in accordance with article 28 (1.7) (circumstances excluding criminal responsibility).[16] According to information from the Supreme Court, on 28 December 2006, the Osh City Court rejected the complaint of the author against the decision of the Prosecutor's Office.[17] The appeal

[15] The author refers to the summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 (A/HRC/WG.6/8/KGZ/3), para. 28.

[16] The State party does not specify in its submission which law it is referring to with respect to the citation of article 28 (1.7).

[17] The State party's submission does not specify which decision of the Prosecutor's Office was under appeal.

against the City Court decision was rejected by the Osh Regional Court on 15 March 2007. The Judicial Collegium of the Supreme Court on Criminal Cases and Administrative Offences, upon further appeal, on 26 September 2007, revoked the Osh Regional Court decision and returned the case for a new examination to the Osh City Court. On 15 June 2007, the Osh City Court issued a ruling rejecting as unfounded the author's appeal against the action of the Prosecutor's Office and the decision of 6 February 2006 to terminate the investigation into the police officers. The author's subsequent appeal of that ruling was rejected on 2 August 2007 by the Judicial Collegium of the Osh Regional Court on Criminal Cases and Administrative Offences. The Judicial Collegium of the Supreme Court on Criminal Cases and Administrative Offences confirmed the latter decision on 31 October 2007. No further appeal is possible, in accordance with article 96 of the Constitution.

4.2 The State party submits that, on 26 November 2005, the investigation was assigned to the Prosecutor's Office of Osh City. It also submits that in the course of the investigation the six cellmates of the deceased had been questioned and that they had testified that no violence had been perpetuated against him by the police officers or by the cellmates themselves and that he had stated that he wanted to commit suicide. They also stated that when they woke up at around 6 a.m. on 20 November 2005, they saw the author's brother sitting on the toilet cutting his own throat. They called the guards, who opened the door of the cell and carried him out. An ambulance arrived and took him to the hospital. In the course of the investigation the ambulance workers were also questioned. They testified that they had arrived at 6:20 a.m. on 20 November 2005, examined the victim, stopped the bleeding and transported him to the hospital, and that he was in a serious condition. Furthermore, the investigators questioned the person who had filed the complaint against the author's brother and the wife of that person; they testified that they had not seen the author's brother since 27 October 2005, that they had not visited him in detention and that they had not delivered any products to him. No cutting instruments were found during the examination of the scene.

4.3 The State party submits that the conclusion of the forensic medical examination, dated 30 November 2005, stated that the body of the victim showed two cuts on the throat that had damaged the skin, soft tissues, veins and certain muscles, a cut on the left wrist, a cut on the left knee and bruises on the stomach, left arm and right leg. The death resulted from blood loss in the internal organs as a result of the bleeding from the throat wounds. On 16 January 2006, another forensic medical examination was ordered, which concluded that the neck wounds could have been self-inflicted, but stated that it was not possible to determine whether that was the case.

4.4 On an unspecified date, the Prosecutor's Office issued a ruling terminating the criminal investigation against the cellmates of the author's brother, since there was no evidence of a crime. An internal investigation by the Ministry of Internal Affairs had also been initiated. Following that investigation, on 12 December 2005, the Head of the Internal Affairs Directorate in Osh issued a reprimand against one police officer who was on duty at the time of the event and a severe reprimand against the Chief of the police station, citing bad organization of the work of the station. On 9 February 2006, the case was forwarded for further investigation to the Investigative Department of the Internal Affairs Directorate in Osh. On 21 February 2006, the criminal case against the employees of the Osh City Hospital, who provided medical assistance to the author's brother, was discontinued since no crime was found to have been committed by them. A forensic handwriting expert issued a conclusion, dated 15 August 2006, stating that the suicide note found on the cigarette pack in the cell was written by the author's brother. On 1 August 2006, the criminal investigation into the death of the author's brother was discontinued on the ground that the investigators could not find an individual who could be charged with the crime.

Author's comments on the State party's observations

5. On 30 January 2012, the author submitted that the State party did not dispute the basic facts of the case, namely that his brother had been arrested by the police officers in Osh and died while in the detention centre in Osh. He notes that the State party does not challenge the admissibility of the case. He also notes that the State party's observations do not address the arguments that the State party had failed in its positive obligation to protect the right to life of a vulnerable prisoner, that his brother's death must be presumed to be an arbitrary killing and that the State party had failed to conduct a thorough and impartial investigation rebutting that presumption, and that it had failed to provide access to an effective remedy for the family of the victim. The author reiterated his initial submission.

State party's further observations

6.1 On 18 April 2012, the State party reiterated the facts related to the criminal charges against the author's brother and the investigation into his death (see paras. 4.1–4.3). The State party further reiterates that a suicide note was found scribbled on a cigarette package and that a forensic handwriting assessment confirmed that it had been written by the author's brother. It submits that among the reasons to open a criminal investigation against the cellmates of the victim were the facts that no cutting instrument had been recovered and that the forensic medical examination was inconclusive regarding the issue of whether his lethal wounds had been self-inflicted. The State party submits, however, that the investigation could not gather evidence that the cellmates or the police officers in the station were responsible for the injuries inflicted on the author's brother.

6.2 The State party contests the author's submission that his brother was subjected to torture by his cellmates and that the police officers in the station were aware of that. It submits that witnesses are being warned of the criminal responsibility for false testimony when questioned, that both the cellmates and police officers from the station had been questioned and that there were no contradictions among their testimonies. The testimonies did not indicate that the author's brother had been tortured or that the police officers had been aware of any torture. It transpired that the author's brother had been found by his cellmates, who called the officer on duty, who administered first aid. No sounds of fighting were heard. The case file contains the suicide note of the author stating that no one is guilty of his death. Further, the investigative bodies took all possible measures to investigate the criminal case. All petitions of the family of the victim and their lawyers were reviewed and responded to in a timely manner.

6.3 The State party submits that during the detention of the author's brother, between 7 and 20 November 2005, the Prosecutor's Office of Osh twice visited the detention centre The author's brother did not raise any complaints regarding torture during those visits. Further, employees of the police station were disciplined for the violations that they had committed.[18]

6.4 The State party contests the author's submission that it had declared his brother's death a suicide. It maintains that at the time of the submission the investigative bodies had not made an official statement regarding the suicide of the author's brother and the investigation continued. On 29 February 2012, the Prosecutor's Office of Osh, after reviewing the case, revoked the decision to terminate the investigation and sent it to the Investigative Department of the Osh Directorate of Internal Affairs for additional investigation. The State party also submits that the domestic legislation defines torture in article 305-1 of the Criminal Code and classifies it as malfeasance in office. The State party

[18] The State party does not specify what violations had been committed by the police officers.

maintains that the death of the author's brother cannot be qualified as torture under the domestic law.

Author's further comments

7.1 On 22 June 2012, the author submitted that in its observations the State party for the first time recognized that the inability to find in the locked cell the weapon with which his brother's injuries were inflicted might be an indication that the cellmates may be responsible. He notes that, in contradiction with its reliance on the suicide note, the State party denies claiming that the death of his brother resulted from a suicide because the investigation was still ongoing, six and a half years after the fact. He maintains that none of the above responds to his submissions and the violations set out in the initial communication. He reiterates his previous submissions.

7.2 The author submits that the State party accepted the statement of his brother's cellmates and the police officers at face value, despite the contradiction with other existing evidence, which demonstrates the ineffective nature of the investigation. He further reiterates that the evidence that his brother had been tortured had not been assessed by the investigating authorities.

7.3 With regard to the State party's submission that the investigation had been reopened, the author submits that the investigation cannot result in charges for the torture that his brother experienced, because under the current legislation the crime of torture can only be committed by officials. The author also submits that the reopened investigation is unduly delayed and that there is no indication that it will be more efficient than the previous investigation. The author maintains that the investigation had been dormant for over five years since the last known investigative action, namely, the flawed analysis of the cigarette pack, and its reopening in February 2012, without any details on what steps have been taken, cannot prevent the Committee from examining the communication.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5 (2 (a)) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party's submission that the investigation into the death of the author's brother was reopened in February 2012, as well as the author's claim that the investigation has been ineffective and unreasonably prolonged. The Committee recalls its jurisprudence that, for the purposes of article 5 (2 (b)) of the Optional Protocol, domestic remedies must both be effective and available, and must not be unduly prolonged.[19] The Committee observes that in the instant case the investigation was reopened six years after the death of the victim and that, to the Committee's knowledge, those proceedings have yet to be finalized. Therefore, the Committee considers that, in the

[19] See communication No. 563/1993, *Bautista de Arellana* v. *Colombia*, Views adopted on 27 October 1995, para. 5.1, and communication No. 612/1995, *Villafañe Chaparro et al.* v. *Colombia*, Views adopted on 29 July 1997, paras. 5.2, 8.8 and 10.

circumstances of the present case, domestic remedies have been unreasonably prolonged and that article 5 (2 (b)) does not preclude it from considering the communication.[20]

8.4 The Committee notes that the State party has not challenged the admissibility of the communication on other grounds and finds that the author has sufficiently substantiated his allegations under articles 6 (1) and 7, read alone and in conjunction with article 2 (3), for the purposes of admissibility. The Committee, therefore, proceeds to its examination on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

9.2 As to the author's claim in relation to the arbitrary deprivation of his brother's life, the Committee recalls its jurisprudence that the State party by arresting and detaining individuals takes the responsibility to care for their life.[21]

9.3 The Committee notes that in the instant case it is undisputed that the author's brother died on 20 November 2005 while he was in the custody of the State party's police, and that there is no final official explanation of how his death occurred. The Committee notes the author's submissions that: his brother had been subjected to psychological and physical abuse by other men in his cell because he was charged with a sexual offence against another man; that the author had received information from a guard in the police station that his brother had been forced to eat and sleep near the toilet and to inflict injuries upon himself with metal cutlery; that his brother's dish and spoon had been damaged by his cellmates to make it difficult for him to eat; and that the authorities were aware of the abuse and also of the risk it posed to his brother's life, but did nothing to prevent, halt or punish it. The Committee also notes the State party's submission that, when questioned, the cellmates of the author's brother denied torturing him and the guards at the police station denied having knowledge of any torture.

9.4 The Committee notes the author's claims that the autopsy report revealed various injuries on the victim's body, such as a cut on the left wrist, a cut on the left knee, bruises on the stomach, left arm and right leg, and missing teeth, that his brother had been ill-treated by his cellmates on a daily basis for the duration of his detention, because of the nature of the charges brought against him, and that this happened with the acquiescence of the police station personnel. The Committee also notes that the State party has not explained how the injuries of the author's brother may have occurred in police custody, and that the State party had simply denied the allegations of ill-treatment and allegations that the guards at the detention centre were aware of the alleged daily abuse of Mr. Ernazarov by his cellmates during his detention. The Committee considers that it is the duty of the State party to afford protection to everyone in detention as may be necessary against threats to life. In the absence of any information, other than denial, by the State party with respect to the author's allegation that the authorities were aware of his brother's daily ill-treatment by his cellmates, and absent any information on measures taken to protect his brother's right to life, the Committee concludes that the Kyrgyz authorities are responsible for not

[20] See communications No. 1560/2007, *Marcellana and Gumanoy* v. *Philippines*, Views adopted on 30 October 2008, para. 6.2; No. 1250/2004, *Rajapakse* v. *Sri Lanka*, Views adopted on 14 July 2006, paras. 6.1 and 6.2; and No. 992/2001, *Bousroual* v. *Algeria*, Views adopted on 30 March 2006, para. 8.3.

[21] See *Lantsova* v. *Russian Federation*, para. 9.2, and communication No. 1756/2008, *Zhumbaeva* v. *Kyrgyzstan*, Views adopted on 19 July 2011, para. 8.6.

taking adequate measures of protection. The Committee concludes that in the circumstances of the present case the State party is responsible for the failure to protect the victim's life, in breach of article 6 (1) of the Covenant.

9.5 As to the author's claim under article 7, the Committee recalls that it is the duty of the State party to afford everyone protection as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.[22] The State party is responsible for the security of any person in its custody, and when an individual is injured while in detention it is incumbent on the State party to produce evidence refuting the allegations that the State party's agents are responsible[23] and showing that they applied due diligence in protecting the detainee. The Committee notes that the State party has not addressed in a substantiated way the specific allegations of ill-treatment advanced by the author. In these circumstances, the Committee concludes that the author's claims are substantiated and have been corroborated by the official autopsy report and its independent evaluation and finds, therefore, a violation of article 7 of the Covenant with regard to the author's brother.

9.6 The Committee notes the author's submission that the State party failed to conduct a prompt, impartial, thorough and effective investigation of the victim's death and allegations of torture. The Committee notes the author's claim that the investigation was not independent because both the internal investigation and the bulk of the criminal investigation were conducted by the Ministry of Internal Affairs, which is the institution that was holding his brother in custody when he was tortured and killed with the knowledge and acquiescence of police officers. The Committee recalls its constant jurisprudence that complaints against ill-treatment prohibited by article 7 and allegations of violations of article 6 (1) must be investigated promptly, thoroughly and effectively through an independent and impartial body,[24] and that in cases in which the established investigative procedures are inadequate and in cases where there are complaints from the family of the victim about those inadequacies or other substantial reasons, States parties should pursue investigations through an independent commission of inquiry or similar procedure.[25] The families of the deceased and their legal representatives should have access to all information relevant to the investigation, and should be entitled to present other evidence.[26] The Committee observes that according to the author the investigation had failed to seize important evidence and question key witnesses, and that it is undisputed that no cutting instrument was recovered from the cell, despite the fact that the victim died from cuts on his throat. The Committee also notes that according to the author's uncontested submission the victims' family was not informed of the progress of the investigation nor was a final report of the investigation made available to the family (see para. 3.4). The Committee concludes that the failure of the State party's authorities to investigate promptly and properly the circumstances of Rakhmonberdi Ernazarov's death effectively denied a remedy to the author, and the rest of the family, in violation of his rights under article 2 (3), read in conjunction with articles 6 (1) and 7.[27]

---

[22] See general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 2.

[23] See communication No. 907/2000, *Siragev* v. *Uzbekistan*, Views adopted on 1 November 2005, para. 6.2; communication No. 889/1999, *Zheikov* v. *Russian Federation*, Views adopted on 17 March 2006, para. 7.2; and *Zhumbaeva v. Kyrgyzstan*, para. 8.9.

[24] See general comment No. 20, para. 14 and general comment No. 31, para. 15.

[25] See *Eshonov* v. *Uzbekistan*, para. 9.6.

[26] Ibid.

[27] See communication No. 1275/2004, *Umetaliev and Tashtanbekova* v. *Kyrgyzstan*, Views adopted on 30 October 2008, para. 9.6 and *Zhumbaeva v. Kyrgyzstan*, para. 8.10.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by Kyrgyzstan of the rights of the author's brother under articles 6 (1) and 7, and of the author's rights under article 2 (3) read in conjunction with articles 6 (1) and 7 of the Covenant.

11. In accordance with article 2 (3 (a)) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The remedy should include an impartial, effective and thorough investigation into the circumstances of the author's brother's death, prosecution of those responsible and full reparation, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.

12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the present Views and to have them translated in official languages of the State party and widely distributed.